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OFFICE OF PETITIONS

In Application of :
Tolle, et al. :
Application No.: 10/566,802 : **ON PETITION**
Filed: January 30, 2006 :
Attorney Docket No.: DE03 0258 US1 :
For: HIGH FREQUENCY CONTROL OF A :
SEMICONDUCTOR SWITCH :

This is a decision on the petition captioned, "REQUEST FOR WITHDRAWAL OF ERRONEOUSLY-ISSUED NOTICE OF ABANDONMENT," filed December 10, 2008. The petition will be treated under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any further request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely submit a reply within one month of the mailing of the March 20, 2008 Notification of Non-Compliant Appeal Brief (Notice). No response being received, this application became abandoned on April 21, 2008. A Notice of Abandonment was mailed on October 24, 2008.

Petitioners allege that the March 20, 2008 was not received due to Office error in mailing the correspondence to an incorrect address.

A review of the record indicates no irregularity in the mailing of the March 20, 2008 Notice, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicants at the correspondence address of record.

Petitioners request that the holding of abandonment be withdrawn because petitioners contend that the Office mailed the correspondence to an incorrect address.

Petitioners point out the fact that a request to change the correspondence address of record was filed on January 3, 2008. Petitioners argue the holding of the abandonment should be withdrawn because the Office did not enter the changes, and this resulted in the March 20, 2008 Notice being mailed to a previous address.

While a request to change the correspondence address was filed on January 3, 2008, it was **not** filed by an attorney of record. Because Eric M. Bram is not an attorney of record, he may not change the correspondence address of record. Under 37 CFR 1.33(a)(2), where an executed oath or declaration under 37 CFR 1.63 has been filed by any of the inventors, the correspondence address may be changed by (A) a patent practitioner of record, (B) an assignee as provided for under 37 CFR 3.71(b), or (C) all of the applicants (37 CFR 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with 37 CFR 3.71. See 37 CFR 1.33(a)(2).

The ultimate cause of the abandonment is applicants' failure to properly inform the Office of the correct correspondence address. Therefore, the petition to withdraw the holding of abandonment is dismissed.

Applicants are responsible for specifying a correct correspondence address. A delay caused by the failure to provide the Office with a current correspondence address does not constitute an unavoidable delay. See Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995).

A delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute an "unavoidable" delay. See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (N.D. Ind. 1987), Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

Petitioners are strongly encouraged to file a petition to revive under the unintentional delay standard of 137(b).

Further correspondence with respect to this matter should be addressed as follows:


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